

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DWAYNE E. BANKS, ID # 07068402,)
Plaintiff,)
vs.) No. 3:08-CV-0897-L (BH)
DALLAS COUNTY SHERIFF) ECF
DEPARTMENT,) Referred to U.S. Magistrate Judge
Defendant.)

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of the Court in implementation thereof, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

Plaintiff is currently detained or incarcerated in the Dallas County Jail. On May 28, 2008, the Court received a handwritten civil complaint from plaintiff. On June 2, 2008, the Court issued a Notice of Deficiency and Order. It therein notified plaintiff that he had not paid the requisite filing fee nor submitted a request to proceed *in forma pauperis*, and further notified him that his pleading was not on the appropriate form. It granted him thirty days to cure the deficiencies and warned him that the failure to do so may result in the dismissal of this action pursuant to Fed. R. Civ. P. 41(b). To date, plaintiff has filed nothing further in this case.

II. INVOLUNTARY DISMISSAL

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss *sua sponte* an action for failure to prosecute or follow orders of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). This authority flows from a court's inherent power to control its docket, pre-

vent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962). By not responding to the Notice of Deficiency and Order, plaintiff has exhibited an intent not to prosecute this action. Accordingly, the Court should dismiss this action without prejudice for failure to prosecute the action.

III. RECOMMENDATION

For the foregoing reasons, it is recommended that this action be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b).

SIGNED this 14th day of July, 2008.



IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).



IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE